IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITION NO: 17686 of 2004

Between:

Maj K. Madhava Rao S/o Sri K. Pullaiah Garu
1 Andhra EME, UNIT NCC, Plot No. 218, First Floor, Gunrock Enclave,
Secunderabad-9

..... PETITIONER

AND

1 The Chief of Army staff Army Head Quarters,

DHQPO, New Delhi-110 001
2 The Station Commander Station Head Quarters,

Secunderabad Cantt. Secunderabad
3 Air Commodore James Sebastian Deputy

Director General NCC, Malhotra Enclave,
General Choudhary road, Secunderabad
4 Col MV Moogi Director, NCC, Malhotra Enclave,

General Choudhary Road, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus, or any other appropriate Writ order or direction, declaring the action of the respondent authorities in not allotting family accommodation in station pool to the petitioner as illegal, void and non-est in the eye of law and opposed to principles of natural justice.

Counsel for the Petitioner: MR.NARESH BYRAPANENI

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court at the stage of admission made the following:

HONOURABLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO.17686 OF 2004

ORDER:

The petitioner is working as an Administrative Officer in N.C.C. at Hyderabad under the control of the 4th respondent. He is a regular commissioned officer of the Indian Army, since 1985. He worked in different capacities and in various parts of the country. After Cargil war, he was posted to Hyderabad to 1 Andhra EME, Unit NCC. He applied to the second respondent for living quarters at Secunderabad, in Pool-A. He was informed that the accommodation was not available for N.C.C. Officers and he would be allotted the quarter as and when available. He was provided with a quarter of dilapidated condition without garage, servant quarter and basic amenities. He applied for better accommodation, but his request was rejected while allotting better quarters to the officers, juniors to him by showing discrimination towards N.C.C. Officers. The respondents 3 and 4 are discriminating the N.C.C. Officers and putting them to disadvantage intentionally. The refusal of the second respondent to allot family quarter to the petitioner is arbitrary and illegal and discriminative under Art.14 of the Constitution of India. The petitioner therefore, approached this Court through this writ petition seeking to declare that the action of the respondent authorities in not allotting family accommodation in station Pool to the petitioner as illegal and against the principles of natural justice.

2. The respondents 1 and 2 filed a counter denying the allegations made in the writ petition and the contents of the counter- affidavit are briefly as follows:

The petitioner was posted to 1(A), EME Unit, NCC on 25.11.2002. He was posted to Secunderabad from the field area. The petitioner's family was in occupation of Government separated family accommodation bearing House No.205/1 detention barracks Trimulgherri, Secunderabad w.e.f.19.02.2001. The

petitioner was required to vacate the separated family married accommodation within two months after posting to P-Station in Secunderabad. However, the petitioner continued to stay unauthorizedly in the said accommodation beyond 25.11.2002. The petitioner applied for retention of the separated family accommodation through an application dt.26.5.2003. The petitioner was however sanctioned retention of the separated family accommodation for a period of five months till 31.08.2003. The petitioner finally vacated separated family accommodation on 20.10.2003. The petitioner applied for regular married Government accommodation on 10.06.2003. His seniority was taken from 11.09.2002 and was included in the seniority list. The petitioner was allotted married accommodation No.56-B Malhotra Enclave (NCC Pool Accommodation). Though the petitioner is entitled to NCC Pool accommodation, is asking for accommodation in open pool for his convenience. The petitioner is not entitled for any other accommodation. Therefore, the writ petition is liable to be dismissed with costs.

3. The respondents 1 and 2 also filed a supplementary counter-affidavit, wherein they mentioned that the petitioner is entitled to open pool accommodation, but the allotment will be subject to stipulations of priority of officer affected pool and the inter se seniority of applicant officers. The petitioner is in occupation of 56-B Malhotra Enclave on temporary basis.

4. The respondents 3 and 4 also filed a counter-affidavit reiterating the contentions raised by the respondents 1 and 2.

5. In the light of the contentions raised by the respective parties, the point for consideration is:

Whether the petitioner is entitled for open pool accommodation and whether the action of the respondents in not allotting open pool accommodation is illegal and arbitrary and discriminatory under Art.14 of the Constitution of India?

6. The petitioner is working in N.C.C. His seniority was counted by the

respondents from 26.09.2002. He was provided temporary accommodation in quarter No.56-B of Malhotra Enclave, earmarked for NCC Officers. The petitioner contends that as per para 8 of SAO (Special Army Order) 10/S/86 dt.25.07.1986 he shall be treated on par with the service officers, therefore, he is entitled for open pool accommodation as per his seniority in Pool-A. Para of SAO 10/S/86 dt.25.7.1986 reads as follows:

> Para 8: *NCC Officers*: "Service Officers (including whole time NCC officers) posted to NCC DTES/GPHQ/Units will be treated as part of local garrison. They will be allotted Government accommodation (owned or hired) along with other service officers posted in station."

7. The petitioner's counsel also drew the attention of this Court to para 24 of SAO 10/S/86 Dt.25.07.1986, which reads as follows:

> Page 24: *Policy of Accommodation:* All accommodation (Government, owned/hired/requisitioned) in the Station will be kept in the Station Pool at a station where more than one Service has constructed accommodation. Accommodation built by a particular Service at the station will be allotted primarily to officers belonging to that service, subject to the provision that no accommodation in the respective pool in the station, remains vacant at any time. Any accommodation lying vacant/surplus with either service will be offered for allotment to officers of other service on the waiting list irrespective of the Service one belongs to. All other Government owned accommodation ie hired, requisitioned etc. will be merged in a common pool to be allotted to service officers irrespective of the service based as a common seniority roster at that station."

8. The respondents are not disputing these provisions but they are contending that in the year 2001 certain amendments were brought to the order. As per the communication dt.15.03.2002, key location plan (KLP) amendments 2001 were communicated and under S.No.174 in respect of the Station, Secunderabad. S.No.52 at Sheet No.157 NCC DTE (AP), NCC GPHQ and Units (7) were deleted for the purpose of open pool accommodation. The respondents further submitted the Ministry of Defence is allotting separate budget for the maintenance of the quarters under the occupation of the NCC officers, therefore, Malhotra enclave in Secunderbad was earmarked for NCC officers and they are allotted quarters as per seniority of the station. The respondents further submitted that there are 19 quarters married accommodation quarters at

Malhotra Enclave. Out of them, 11 quarters are for permanent accommodation and 8 quarters for temporary accommodation. They further submitted that the petitioner is at S.No.4 in the seniority list of officers for permanent accommodation in NCC Pool as on 11.11.2004 and presently he is in temporary accommodation in quarter No.56-B of Malhotra Enclave.The respondents also submitted the particulars of the quarter numbers, the officers in occupation and the date of occupation of the respective officers. After perusal of the record placed by the respondents, I am convinced that they are maintaining the list of officers as per station seniority and the petitioner after perusing the record placed by the respondents, could not point out any irregularity in the maintenance of the list of officers according to seniority. The only contention of the petitioner is that the petitioner reported to the third respondent against the 4th respondent for occupying double accommodation, but no action was initiated by the third respondent. But he could not place any material during the course of arguments whether there was any irregularity in allotment of the quarter to the 4th respondent.

9. After carefully considering the contentions raised by both parties and after going through the record produced by the respondents, I am convinced that the petitioner failed to point out any glaring irregularity in the process of allotment of the quarters to the officers as per seniority and there is no violation of the instructions issued by the Army authorities from time to time, since the respondents 1 to 3 took all the necessary steps by maintaining the seniority list for allotment of permanent accommodation, there shall not be any further direction to respondents 1 to 3.

10. Having regard to the above circumstances, I do not find any merit in the writ petition.

11. The Writ Petition is accordingly dismissed. No order as to costs.

Dr. G.YETHIRAJULU, J

23rd November, 2004

SKM

To

1 The Chief of Army staff Army Head Quarters,

DHQPO, New Delhi-110 001
2 The Station Commander Station Head Quarters,

Secunderabad Cantt. Secunderabad
3 Air Commodore James Sebastian Deputy

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5 Two C.D. Copies.